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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 **(HONORABLE WILLIAM Q. HAYES)**

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 **RAMON VASQUEZ-CABRALES,**

15 Defendant.

) CASE NO. 08CR0972-WQH

) DATE: May 19, 2008

) TIME: 2:00 p.m.

)
)
) STATEMENT OF FACTS AND
) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) DEFENDANT'S MOTIONS

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18 **I.**

19 **STATEMENT OF FACTS**

20 The following statement of facts and facts further cited in this motion are based primarily on the
21 probable cause statement. Mr. Vasquez-Cabrales in no way admits the truth of these facts nor their accuracy
22 as cited in these motions. Further, Mr. Vasquez-Cabrales reserves the right to challenge the truth and
23 accuracy of these facts in any subsequent pleadings or during any further proceedings.

24 On March 25, 2008, Supervisory Border Patrol Agent D. Hill observed a Ford F150 truck driving
25 approximately five miles north of the United states/Mexico international Boundary approximately twenty
26 miles east of the Tecate, California Port of Entry. According the Agent Hill the truck appeared to be heavily
27 laden as it bounced excessively.
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1 Agent Hill continued following the Ford pick-up westbound on I-8 and allegedly saw a silver
2 tarp covering the bed of the truck. According to Agent Hill, people were "observed moving under the tarp."
3 The truck was pulled over and seven individuals were located underneath the tarp while one other individual
4 was located on the floorboard of the pick-up truck.

6 II.

7 MOTION TO COMPEL DISCOVERY

8 Mr. Vasquez-Cabrales moves this Court to compel the government to provide all additional
9 discovery to which he is entitled. This request is not limited to those items that the prosecutor knows of.
10 It includes all discovery listed below that is in the custody, control, care, or knowledge of any "closely
11 related investigative [or other] agencies." See United States v. Bryan, 868 F.2d 1032 (9th Cir. 1989).

12 (1) Brady Information. The defendant requests all documents, statements, agents' reports, and
13 tangible evidence favorable to the defendant on the issue of guilt and/or which affects the credibility of the
14 government's case. Under Brady v. Maryland, 373 U.S. 83 (1963), impeachment as well as exculpatory
15 evidence falls within the definition of evidence favorable to the accused. United States v. Bagley, 473 U.S.
16 667 (1985); United States v. Agurs, 427 U.S. 97 (1976).

17 (2) Any Proposed 404(b) Evidence. The government must produce evidence of prior similar
18 acts under FED. R. CRIM. P. 16(a)(1) and FED. R. EVID. 404(b) and any prior convictions which would be
19 used to impeach as noted in FED. R. CRIM. P. 609. In addition, under FED. R. EVID. 404(b), "upon request
20 of the accused, the prosecution . . . shall provide reasonable notice in advance of trial . . . of the general
21 nature" of any evidence the government proposes to introduce under FED. R. EVID. 404(b) at trial. The
22 defendant requests notice two weeks before trial to give the defense time to investigate and prepare for trial.

23 (3) Request for Preservation of Evidence. The defendant requests the preservation of all
24 physical evidence that may be destroyed, lost, or otherwise put out of the possession, custody, or care of the
25 government and which relate to the arrest or the events leading to the arrest in this case. This request
26 includes, but is not limited to, the results of any fingerprint analysis, the defendant's personal effects, and
27 any evidence seized from the defendant or any third party.

1 (4) Defendant's Statements. The defendant requests disclosure and production of all statements
2 made by the defendant. This request includes, but is not limited to, the substance of any oral statement made
3 by the defendant, FED. R. CRIM. P. 16(a)(1)(A), and any written or recorded statement made by the
4 defendant. FED. R. CRIM. P. 16(a)(1)(B)(I)-(iii), as well as any rough notes taken by the agents during the
5 questioning of Mr. Vasquez-Cabrales.

6 (5) Tangible Objects. The defendant seeks to inspect and copy as well as test, if necessary, all
7 other documents and tangible objects, including photographs, books, papers, documents, alleged narcotics,
8 fingerprint analyses, vehicles, or copies of portions thereof, which are material to the defense or intended
9 for use in the government's case-in-chief or were obtained from or belong to the defendant. FED. R. CRIM.
10 P. 16(a)(1)(E).

11 (6) Expert Witnesses. The defendant requests the name, qualifications, and a written summary
12 of the testimony of any person that the government intends to call as an expert witness during its case in
13 chief. FED. R. CRIM. P. 16(a)(1)(G).

14 (7) Witness Addresses. The defendant requests access to the government's witnesses. Thus,
15 counsel requests a witness list and contact phone numbers for each prospective government witness.
16 Counsel also requests the names and contact numbers for witnesses to the crime or crimes charged (or any
17 of the overt acts committed in furtherance thereof) who will not be called as government witnesses.

18 (8) Jencks Act Material. Mr. Vasquez-Cabrales requests production in advance of trial of
19 material discoverable under the Jencks Act, 18 U.S.C. § 3500. Advance production will avoid needless
20 delays at pretrial hearings and at trial. This request includes any "rough" notes taken by the agents in this
21 case. This request also includes production of transcripts of the testimony of any witness before the grand
22 jury. See 18 U.S.C. § 3500(e)(1)-(3).

23 (9) Informants and Cooperating Witnesses. Mr. Vasquez-Cabrales requests disclosure of the
24 name(s), address(es), and location(s) of all informants or cooperating witnesses used or to be used in this
25 case, and in particular, disclosure of any informant who was a percipient witness in this case or otherwise
26 participated in the crime charged against Mr. Vasquez-Cabrales. Roviaro v. United States, 353 U.S. 53, 61-
27 62 (1957). The government must disclose any information derived from informants which exculpates or
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1 tends to exculpate Mr. Vasquez-Cabrales. Brady v. Maryland, 373 U.S. 83 (1963). The government must
2 disclose any information indicating bias on the part of any informant or cooperating witness. Id.

3 (10) Residual Request. Mr. Vasquez-Cabrales intends by this discovery motion to invoke his
4 rights to discovery to the fullest extent possible under the Federal Rules of Criminal Procedure and the
5 Constitution and laws of the United States.

6 **III.**

7 **MOTION FOR LEAVE TO FILE FURTHER MOTIONS**

8 Mr. Vasquez-Cabrales and defense counsel have received limited discovery in this case. Once
9 discovery is produced and counsel has had an opportunity to review it, and to conduct her own
10 investigation, the defense may need to file further motions, or to supplement existing motions.

11 **IV.**

12 **CONCLUSION**

13 For the reasons stated, Mr. Vasquez-Cabrales respectfully requests this Honorable Court grant
14 his motions.

15 Respectfully submitted,

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17 Dated: April 29, 2008

18 /s/ Linda Lopez
19 LINDA LOPEZ
20 Federal Defenders of San Diego, Inc.
21 Attorneys for Mr. Vasquez-Cabrales
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CERTIFICATE OF SERVICE

Counsel for Defendant certifies that the foregoing pleading is true and accurate to the best of her information and belief, and that a copy of the foregoing document has been served this day upon:

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Dated: April 29, 2008

/s/ Linda Lopez

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